



STATE OF UTAH
NATURAL RESOURCES
Oil, Gas & Mining

Norman H. Bangerter, Governor
Dee C. Hansen, Executive Director
Dianne R. Nielson, Ph.D., Division Director

355 W. North Temple • 3 Triad Center • Suite 350 • Salt Lake City, UT 84180-1203 • 801-538-5340

August 21, 1985

CERTIFIED RETURN RECEIPT REQUESTED
NO. P 168 903 619

Mr. Robert H. Hagen, Director
Albuquerque Field Office
Office of Surface Mining
219 Central Avenue, NW
Albuquerque, New Mexico 87102

Dear Bob:

Re: Ten-Day Notice (TDN) No. X-85-02-031-03, Co-Op Mining Company,
Bear Canyon Mine, ACT/015/025, Folder No. 7, Emery County, Utah

I am writing to you in an attempt to clarify Utah's March 20, 1985 response to the above-cited TDN. You asked for this clarification in your August 2, 1985 letter to the Division as a reiterated request to your original letter of April 2, 1985.

This TDN was issued on March 7, 1985, so that the Albuquerque Field Office would be better informed on the permitting status of the upper portion of the Co-Op Bear Canyon Road, and a topsoil storage area approximately .60 miles south of the mine area. The April 2, 1985 letter appears not to require any further information on the topsoil storage area; rather, your request centers on the road to the Bear Canyon Mine from a point .65 miles north of State Highway 31, (the blue gate) to the place where the mine sign is posted for the Bear Canyon Mine.

I will address your questions in the same order which they were asked. For clarity, each question is repeated below.

1. DOGM's citation of July 8, 1983 required that the operator cease use of the road until a permit was obtained. A Consent Order was signed by the Board and Co-Op on October 27, 1983. At what time was the operator allowed to resume use of the road and under what authority?

Response: Violation No. N83-1-2-3, Part 2 of 3, was issued to Co-Op Mining Company for operating without a permit after constructing an alternative route to the

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Bear Canyon Mine. This alternative route consisted of a road relocation of the Bear Canyon access road, which had existed for many years as an improved trail.

The Notice of Violation (NOV) directed Co-Op to cease use of the relocated road until it was permitted. Subsequently, Emery County obtained a Right-of-Way from the Moab District of the Bureau of Land Management (BLM) (ROW U-52411) for the Bear Canyon Road. The County also determined that the relocated portion of the road below the blue gate was indeed a county road. A copy of the Emery County/Co-Op Mining Company Agreement dated August 3, 1983 is enclosed.

In summary, the use of the newly relocated road below the blue gate was allowed on September 15, 1983 under the authority of the above-cited Right-of-Way and Agreement. The road's status above the blue gate was in question at that time, particularly since it was unclear whether this portion of the road needed to be included in the company's interim permit. The confusion was caused by the road's long-standing historical status as the only access into Bear Creek Canyon, and the possibility of the upper portion of the road having prescriptive public road status. Admittedly, the NOV could have been written more specific to the lower portion of the Bear Canyon Road to avoid this unclearness as to the upper part.

2. Co-Op and Emery County entered into an Agreement regarding ownership and jurisdiction for the road on August 3, 1983, twenty six (26) days after the NOV was issued. The Board vacated the NOV on October 27, 1983, because the road had been subject to litigation between Co-Op and Emery County. Please clarify what constituted litigation and how the Board could determine that a violation did not exist because of the litigation.

Response: The litigation referred to is that which is referenced in Mr. Carl E. Kingston's letter of June 27, 1983 (copy enclosed) and the company's appeal of Right-of-Way Application U-50170 to the BLM, also referenced in Mr. Kingston's letter. The Board determined that an NOV did not exist on the road by virtue of the Co-Op vs. Emery County lawsuit, which was eventually settled by the August 3rd Agreement establishing ownership and responsibility for the road as a public road.

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3. What formal action was taken by the Board or DOGM to extend the required date for a permit from November 23, 1983 to whenever a permit will be issued?

Response: It appeared to the Division at the time the Order was issued that permitting the upper portion of the road (from the blue gate to the sign) would most efficiently be accomplished by including this .25 mile length of road in the repermitting application for the Bear Creek Canyon Mine.

No formal action was taken to extend the required date for obtaining a permit. An administrative decision was made to incorporate the road and mine permitting actions together for efficiency and expediency.

This concludes the Division's response to your inquiry for clarification of this TDN response. I apologize for the delay in answering your April letter and hope that we have provided you with enough information relative to this NOV. If you need any additional information, please let me know.

Best regards,



Dianne R. Nielson
Director

jb

Enclosures

cc: L. P. Braxton
R. W. Daniels
J. C. Helfrich
B. W. Roberts

0338Q



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Moab District
San Rafael Resource Area
P. O. Drawer AB
Price, Utah 84501

IN REPLY
REFER TO

9230
UT-060-6434
UT-060-6438
(U-067)

SEP 19 1983

Mr. Wendell Owen
CO-OP Mining Company
P. O. Box 1245
Huntington, Utah 84528

Dear Mr. Owen:

Right-of-way U-52411 was issued to Emery County on September 15, 1983, for

the Bear Canyon Road. A copy of the agreement between your company and the

County has been received. We are therefore closing Trespasses UT-060-6434

and UT-060-6438.

Sincerely yours,

James R. Ramey
Area Manager

cc: Joe Heltrich, Utah Div. of Oil, Gas and Mining
4241 State Office Building, SLC, UT 84114

AGREEMENT

This agreement made and entered into this 3rd day of August 1983, by and between Emery County, a body corporate and politic (County), and Co-Op Mining Company, a Utah general partnership (Co-Op),

WHEREAS, there is an existing road in Emery County known as Bear Creek Road, and

WHEREAS, Co-Op requires extensive use of said road, and

WHEREAS, due to said extensive use, said road should be relocated for the health, safety and welfare of the citizens of County as well as others who may have occasion to use said road,

NOW, THEREFORE, be it agreed as follows:

1. The parties hereto agree and acknowledge that the southern 0.65 miles of the road known as Bear Creek Road is a County road. Said County road runs from State Road 31 in a northerly direction for approximately 0.65 miles to a presently existing gate. Thereafter the road is a private road.
2. That Co-Op will relocate the Bear Creek Road according to the plans and specifications prepared by the Emery County Engineer and described on the document entitled Bear Canyon County Road Relocation dated October 12, 1982.
3. Co-Op will relocate the Road according to the plans and specifications referred to above at their expense. Co-Op will reimburse County for engineering costs incurred by County concerning the preparation of said plans and specifications and site inspections up to One Thousand (\$1,000.00) Dollars.
4. Co-Op will indemnify and defend County for any damage caused, or loss incurred to or claim made by any public or private individual, firm, group, association, partnership or corporation as a result of the construction conducted to relocate Bear Creek Road. Said indemnification will continue until such time as County approves the completed roadway and accepts construction thereof.
5. Co-Op acknowledges and accepts the easements of North Emery Water Users and Huntington City which exist in, along and across the relocate Bear Creek Road. Said easements are in existence on the ground. Co-Op's acknowledgment thereof herein recognizes and preserves said easements.
6. Co-Op agrees to encase water lines of North Emery Water Users and Huntington City in nestable corrugated pipe pursuant to plans and specifications prepared by the Emery County Engineer.

7. Co-Op agrees to allow access to other property served by the relocated Bear Creek Road. Said access shall be allowed to the owner of the property, their successor in interest or any other individual, firm, group, association, partnership or corporation who requires access due to their association with the owner or because the owner has granted permission to the individual, firm, group, association, partnership or corporation to go upon his property. Co-Op will not withhold access due to the type of activity which the then owner or his agents, employees or invitees intend or in fact conduct.

8. Co-Op will provide a completion and performance bond to Emery County upon the execution hereof in the amount of Twenty-Five Thousand (\$25,000.00) Dollars which will remain in force and effect for twelve (12) months after the date said road is accepted by County as indicated in paragraph 4 above.

9. Co-Op will provide liability insurance in an amount not less than Five Hundred Thousand (\$500,000.00) Dollars to be in force during the construction of said road. Said policy will name County as an insured.

10. Co-Op agrees to complete said road in a timely manner not to exceed ~~eighteen (18) months~~ from the date of this agreement. County may make demand upon the bonding company under the bond provided pursuant to paragraph 8 above and secure completion of the relocation in the event construction is not completed within the agreed upon eighteen (18) months.

11. It is further understood that any additional improvements of the relocated Bear Creek Road will be at the expense of all primary users.

12. The Co-Op agrees to reclaim that portion of the old Bear Creek Road according to the specifications and requirements of the Bureau of Land Manager (BLM).

13. That the Co-Op agrees to provide Emery County with the necessary easement agreements with the Utah Department of Transportation.

14. Co-Op acknowledges and agrees to comply with standard number 6.3.8 "Protection Zone" of the Utah State Health Drinking Water Standards as it applies to supplies of drinking water in Bear Canyon.

15. County agrees to inspect the relocated Bear Creek Road within ~~ten (10)~~ days after notification by Co-Op of the completion thereof. County must within five (5) working days of said inspection accept the road or notify Co-Op of any deficiencies which must be then corrected by Co-Op within the time period outlined in paragraph 10 above. Should County fail to notify Co-Op of any deficiencies within five (5) working days, the road is deemed accepted by County and the twelve (12) month period indicated in paragraph 8 above begins to run from the sixth (6th) day after inspection.

IN WITNESS WHEREOF, this agreement is executed the day and year above written, at Castle Dale, Utah, pursuant to a resolution of the Emery County Board of Commissioners at a regularly scheduled meeting of the Board.

EMERY COUNTY, a body politic and corporate,

ATTEST

[Signature]
County Clerk

By [Signature]
Chairman of the Emery County Board of Commissioners

IN WITNESS WHEREOF this agreement is executed at Huntington, Utah.
DATED this 3rd day of August, 1983.

CO-OP MINING COMPANY, a Utah general partnership.

By [Signature]
a General Partner

~~CO-OP MINING COMPANY, a Utah general partnership.~~
~~IN WITNESS WHEREOF this agreement is executed at Huntington, Utah.~~
~~DATED this 3rd day of August, 1983.~~
~~CO-OP MINING COMPANY, a Utah general partnership.~~
~~By [Signature] a General Partner~~